IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

OP.No. 21521 of 1999(K)

PETITIONER:

V.KUTTYAMMA, HEADMISTRESS,
GOVERNMENT L.P.S. MELMURI SOUTH
MALAPPURAM.

BY ADV. SRI.C.V.ANTONY KOTHAMANGALAM

RESPONDENTS:
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1. **THE DEPUTY DIRECTOR (EDN),**
   MALAPPURAM.

2. **THE DIRECTOR OF EDUCATION,**
   TRIVANDRUM.

3. **THE STATE OF KERALA, REPORT THE**
   CHIEF SECRETARY, GOVERNMENT
   SECRETARIATE, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO21521/1999

ORDER ON CMP. NO.35521/1999 IN OP. NO.21521/1999

DISMISSED

29.11.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPRESENTATION OF PETITIONER DT. 27.6.83 TO THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE REPRESENTATION DT. 27.2.84 OF PETITIONER TO THE HONOURABLE MINISTER FOR EDUCATION.

EXT.P3:- COPY OF THE REPRESENTATION DT. 13.9.84 TO IST RESPONDENT BY THE PETITIONER.

EXT.P4:- COPY OF THE PROCEEDINGS DT. 15.5.85 OF IST RESPONDENT WITH NO.A6-21848/84.

EXT.P5:- COPY OF THE REPRESENTATION DT. 8.11.85 TO THE ASST.EDN, OFFICER TANUR BY PETITIONER.

EXT.P6:- COPY OF THE COMMUNICATION DT. 23.7.86 FROM THE ASST. EDN. OFFICER, PARAPPANAGADY.

EXT.P7:- COPY OF THE REPRESENTATION DT. 29.7.86 TO THE IST RESPONDENT BY PETITIONER.

EXT.P8:- COPY OF THE COMMUNICATION DT. 7.7.95 OF A.E.O. MALAPPURAM.

/TRUE COPY/

P.A. TO JUDGE

tss

S.SIRI JAGAN,J

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O.P.No.21521 of 1999

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Dated this the 29th day of November, 2007

JUDGMENT

The petitioner is a member of a scheduled caste, who joined service as a P.D.Teacher on 27.3.1972. According to her, she is entitled to be promoted as Headmistress after 10 years of service, which was denied to her. After repeated representations, by Ext.P4 dated 15.5.1985, she was granted such promotion notionally with effect from 17.9.1982. However, the financial benefits was restricted to be payable only from the date of Ext.P4, namely 15.5.1985. After joining as Headmistress, the petitioner was granted Headmaster's scale which was cancelled by Ext.P4 order dated 23.7.1986 on the ground that Headmasters scale can be granted only after completion of 15 years of service. Petitioner also claims higher grade.

2. As far as the claim for monetary benefits consequent on Ext.P5 dated 15.5.1985, with retrospective effect, I am of opinion that it is too late in the day for the petitioner to claim the same. Ext.P4 is dated 15.5.1985. The petitioner has chosen to approach this Court only in 1999. Of course the petitioner

raises the contention that she had been making representations. The Supreme Court has in the decision of **Rabindranath Bose and others vs. Union of India and others (AIR 1970 SC 470)** has held that the fact that in respect of certain matters representations were being received by the Government from the time to time is not sufficient to explain delay in approaching the court. The said decision is squarely applicable to the petitioner's case. Even according to the petitioner she knew about her eligibility at least on 15.5.1985. She has waited till 18.8.1999 to approach this Court to enforce her claim. Such claim cannot be entertained at this point of time. Therefore, I do not find any merit in the claim for monetary benefits pursuant to Ext.P4 retrospective promotion.

3. As far as the Headmaster's scale is concerned, since the petitioner joined service only on 27.3.1972, she is eligible for Headmaster's scale only after completion of 15 years of service. She completed her 15 years of service only on 26.3.1987. Therefore, I do not find anything wrong in Ext.P6 whereby the Headmaster's scale granted to the petitioner with effect from 17.9.1982 has been cancelled.

4. As far as the claim for higher grade is concerned in Para 9 of the counter affidavit it is specifically stated that necessary directions will be given to the Assistant Educational Officer to sanction higher grade immediately. This is recorded. Now the only question that remains is as to whether the petitioner should refund the excess amount drawn consequent on the wrong grant of Headmaster's scale as per Ext.P4. The petitioner was promoted with retrospective effect from 17.9.1982. Monetary benefits of such retrospective promotion has been denied to her. That being so it is only appropriate that the excess amount paid to her on irregular grant of Headmaster's scale shall not be recovered from her. Ordered accordingly.

Original petition is disposed of as above.

S.SIRI JAGAN, JUDGE

dvs